

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

Michee Muzi,

Plaintiff,

v.

American InterContinental University,

Defendant.

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:
: Civil Action No.: 4:14-cv-00015
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:
:

COMPLAINT

For this Complaint, the Plaintiff, Michee Muzi, by undersigned counsel, states as follows:

JURISDICTION

1. This action arises out of Defendant's repeated violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et. seq.* (the "TCPA").
2. Supplemental jurisdiction exists pursuant to 28 U.S.C. § 1367.
3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that Defendants transact business here, Plaintiff resides in this judicial district, and a substantial portion of the acts giving rise to this action occurred here.

PARTIES

4. The Plaintiff, Michee Muzi ("Plaintiff"), is an adult individual residing in Arlington, Texas, and is a "person" as defined by 47 U.S.C. § 153(10).
5. Defendant American InterContinental University ("American"), is a business entity with an address of 231 North Martingale Road, Schaumburg, Illinois 60173, and is a "person" as defined by 47 U.S.C. § 153(10).

FACTS

6. In or around November 2013, American began placing calls to Plaintiff's cellular telephone.

7. American placed calls to Plaintiff's cellular telephone, number 817-xxx-8457, by using an automated telephone dialer system ("ATDS" or "predictive dialer") and/or by using an artificial or prerecorded voice.

8. Oftentimes, when Plaintiff answered the calls from American, he experienced a period of silence and had to wait on the line to be connected to a live representative.

9. Plaintiff never provided his cellular telephone number to American and never provided his express written consent to American to be contacted on his cellular telephone.

10. On or around November 4 or 5, 2013, Plaintiff informed American that he was not interested in its services and instructed American to cease calling him.

11. Nonetheless, American continued to place automated calls to Plaintiff's cellular telephone knowing that it did not have consent to do so.

COUNT I

**VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT –
47 U.S.C. § 227, et seq.**

12. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

13. At all times mentioned herein and within the last four years, Defendant called Plaintiff on his cellular telephone using an automatic telephone dialing system ("ATDS" or "Predictive Dialer") and/or by using a prerecorded or artificial voice.

14. In expanding on the prohibitions of the TCPA, the Federal Communications Commission (FCC) defines a Predictive Dialer as “a dialing system that automatically dials consumers’ telephone numbers in a manner that “predicts” the time when a consumer will answer the phone and a [representative] will be available to take the call...”*2003 TCPA Order*, 18 FCC 36 Rcd 14022. The FCC explains that if a representative is not “free to take a call that has been placed by a predictive dialer, the consumer answers the phone only to hear ‘dead air’ or a dial tone, causing frustration.” *Id.* In addition, the TCPA places prohibitions on companies that “abandon” calls by setting “the predictive dialers to ring for a very short period of time before disconnecting the call; in such cases, the predictive dialer does not record the call as having been abandoned.” *Id.*

15. Defendant’s telephone systems have some earmarks of a Predictive Dialer. Often times when Plaintiff answered the phone, he was met with a period of silence before Defendant’s telephone system would connect him to the next available representative.

16. Other times, Plaintiff answers and says, “hello, hello” several times and is met with dead air before a live representative comes on the line.

17. Upon information and belief, Defendant’s Predictive Dialers have the capacity to store or produce telephone numbers to be called, using a random or sequential number generator.

18. Plaintiff never provided his cellular telephone to Defendant and never provided his express consent, written or otherwise, to be contacted on his cellular telephone, and in fact instructed Defendant that he was not interested in their services and to cease all calls to him.

19. Defendant placed automatic telephone calls to Plaintiff’s cellular telephone knowing that it lacked consent to call his number. As such, each call placed to Plaintiff was

made in knowing and/or willful violation of the TCPA, and subject to treble damages pursuant to 47 U.S.C. § 227(b)(3)(C).

20. The telephone number called by American was assigned to a cellular telephone service for which Plaintiff incurs charges for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

21. The calls from American to Plaintiff were not placed for “emergency purposes” as defined by 47 U.S.C. § 227(b)(1)(A)(i)

22. As a result of each call made in negligent violation of the TCPA, Plaintiff is entitled to an award of \$500.00 in statutory damages for each call in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

23. As a result of each call made in knowing and/or willful violation of the TCPA, Plaintiff is entitled to an award of treble damages in an amount up to \$1,500.00 pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C)

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays that judgment be entered against the Defendant:

1. Statutory damages of \$500.00 for each violation determined to be negligent pursuant to 47 U.S.C. § 227(b)(3)(B);
2. Treble damages for each violation determined to be willful and/or knowing pursuant to 47 U.S.C. § 227(b)(3)(C); and
3. Such other and further relief as may be just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

Dated: January 13, 2014

Respectfully submitted,

By /s/ Jody B. Burton

Jody B. Burton, Esq.
CT Bar # 422773
LEMBERG LAW L.L.C.
1100 Summer Street, 3rd Floor
Stamford, CT 06905
Telephone: (203) 653-2250
Facsimile: (203) 653-3424
E-mail: jburton@lemborglaw.com

14785 Preston Road, Suite 550
Dallas, Texas 75154
Attorneys for Plaintiff